

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

RAY HARRIS,)
#M21142,)
)
 Plaintiff,)
)
 vs.) Case No. 16-cv-01259-MJR
)
 BETSY SPILLER,)
 MAJOR MALCOLM,)
 BART LIND,)
 JACQUELINE LASHBROOK,)
 and LT. FURLOW,)
)
 Defendants.)

MEMORANDUM AND ORDER

REAGAN, Chief District Judge:

Plaintiff Ray Harris, an inmate who is currently incarcerated at Pinckneyville Correctional Center (“Pinckneyville”), filed this civil rights action pursuant to 42 U.S.C. § 1983 on November 18, 2016. In the Complaint, Plaintiff alleges that several Pinckneyville officials violated his right to be free from cruel and unusual punishment under the Eighth Amendment when they failed to separate him from his cellmate following an “extremely violent fight” on August 30, 2016. (Doc. 1, pp. 5-8). In connection with this claim, Plaintiff seeks monetary damages against the defendants. (*Id.* at 9). The Complaint now awaits preliminary review under 28 U.S.C. § 1915A.

At the time he filed this lawsuit, Plaintiff also filed a Motion for Leave to Proceed *in forma pauperis* (Doc. 2), which was granted on December 2, 2016. (Doc. 7). He also filed a Motion for Service of Process at Government Expense (Doc. 3) and Motion for Recruitment of Counsel (Doc. 4), both of which are currently pending.

On December 12, 2016, Plaintiff filed a Motion to Dismiss Case (Doc. 8). In the motion, Plaintiff indicates that he wishes to dismiss this case and refile it at a later date. His request shall be granted.

With that said, Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, and a filing fee of \$350.00 remains due and payable whether or not the action is voluntarily dismissed. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). However, in light of Plaintiff's timely request to voluntarily dismiss the case before the Complaint was screened under 28 U.S.C. § 1915A, the Court will not assess an additional filing fee when Plaintiff refiles a civil rights action in this District at a later date. In order to bring a new action without incurring another filing fee, Plaintiff will be required to file a copy of this Order with his complaint in the new case.

IT IS HEREBY ORDERED that Plaintiff's Motion to Dismiss Case (Doc. 8) is **GRANTED**, and this action is **DISMISSED without prejudice**. *See* FED. R. CIV. P. 41(a)(1)(A)(i).

IT IS FURTHER ORDERED that Plaintiff's Motion for Service of Process at Government Expense (Doc. 3) and Motion for Recruitment of Counsel (Doc. 4) are **DENIED** as **MOOT**.

IT IS ALSO ORDERED that Plaintiff's obligation to pay the filing fee for this action survives dismissal of this case. However, the filing fee for the next action that Plaintiff files pursuant to 42 U.S.C. § 1983 in the Southern District of Illinois shall be **WAIVED**, on condition that Plaintiff also files a copy of this Order with the complaint.

The Clerk's Office is **DIRECTED** to close this case and enter judgment accordingly.

IT IS SO ORDERED.

DATED: December 13, 2016

s/ MICHAEL J. REAGAN
Chief District Judge